

United States District Court
District of Massachusetts

Chr. Hansen HMO GmbH,

Plaintiff and Counterclaim-Defendant,

v.

Glycosyn LLC,

Defendant and Counterclaim-Plaintiff,

v.

Abbott Laboratories,

Third-Party Defendant.

Civil Action No.
22-11090-NMG

MEMORANDUM & ORDER

GORTON, J.

Pending before the Court is a motion of defendant and counterclaim-plaintiff Glycosyn LLC ("Glycosyn") for leave to file an amended counterclaim. Glycosyn seeks to add a count for patent infringement of U.S. Patent No. 9,453,230 ("the '230 Patent"). Chr. Hansen HMO GmbH ("Chr. Hansen") and Abbott Laboratories ("Abbott") jointly oppose.

Glycosyn sought leave to amend before the deadline for amendments and/or supplements to the pleadings which was January 31, 2024. Accordingly, the lenient Rule 15(a) standard applies. See Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires.").

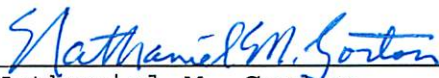
While Glycosyn has known about the possible infringement of the '230 Patent for years (and twice filed but then voluntarily dismissed claims brought pursuant to that patent), it persuasively contends that it did not know how significant were Abbott's infringing sales during the relevant years (2016 and 2017) until it discovered an internal Abbott presentation discussing the importance of 2'-FL. Abbott and Chr. Hansen acknowledge that they did not previously provide sales data before May, 2018 because that data predated the then exclusively-asserted U.S. Patent No. 9,970,018 ("the '018 Patent"). Thus, Glycosyn's only recent comprehension of the scope of potential damages caused by the alleged infringement of the '230 Patent, is reasonable.

The parties disagree about whether additional claim construction will be necessary but, nevertheless, judicial economy will be served by consideration of all claims involving the '018 and '230 Patents together rather than in separate suits.

ORDER

For the foregoing reasons, Glycosyn's motion for leave to file an amended counterclaim (Docket No. 105) is **ALLOWED**.
So ordered.

Dated: May 7, 2024


Nathaniel M. Gorton
United States District Judge